

PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council held Tuesday, October 18, 2005, 10:00 a.m., at the Massachusetts Department of Public Health, 250 Washington Street, Boston, Massachusetts. Public Health Council Members present were: Paul J. Cote, Jr., Commissioner, Department of Public Health, Ms. Phyllis Cudmore, Mr. Manthala George, Jr., Ms. Maureen Pompeo (arrived late at 10:10 a.m.); Mr. Albert Sherman, Ms. Janet Slemenda, Dr. Thomas Sterne, Mr. Gaylord Thayer, Jr. and Dr. Martin Williams. Also in attendance was Atty. Donna Levin, General Counsel.

Commissioner Cote, Chair, announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Ms. Gillian A. Haney, MPH, Director of Surveillance, Office of Integrated Surveillance and Informatics Services, Bureau of Communicable Disease Control; Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control; Mr. Jere Page, Senior Analyst, Determination of Need Program.

REGULATION:

REQUEST FOR FINAL PROMULGATION OF AMENDMENTS TO 105 CMR 300.000: REPORTABLE DISEASES, SURVEILLANCE, AND ISOLATION AND QUARANTINE REQUIREMENTS:

Ms. Gillian Haney, Director of Surveillance, Office of Integrated Surveillance and Informatics Services, Bureau of Communicable Disease Control, presented the amendments to 105 CMR 300.000 to the Council. Ms. Haney said, "...We are before the Council this morning to request final promulgation of amendments to 105 CMR 300.000. Adoption of the proposed regulations will allow the Department to undertake surveillance of injuries of public health importance. It will also allow the Department to establish reporting requirements for Glanders and Melioidosis, and incorporate the most recent federal recommendations for isolation and quarantine."

It was noted that the Department held a public hearing on September 8, 2005 at the State Laboratory Institute. No oral testimony was presented. The Department did not receive any written testimony. One comment regarding technical accuracy was provided during this period. Food handling facility employees with specific enteric diseases, and who have been treated with antimicrobials, must have their stool specimens collected rather than submitted for testing at least forty-eight hours after cessation of therapy. No additional changes were made to the proposed amendments.

"In summary," Ms. Haney stated, "the following three substantive amendments are proposed. The first reflects the U.S. Center for Disease Control and Prevention's most current recommendation, that Glanders and Melioidosis be added to the list of diseases reportable by health care providers and laboratories. Glanders and Melioidosis are considered agents with bioterrorism potential. We propose adding these diseases to the list of those diseases reportable to local boards of health, and to the Department, and have amended the section on isolation and quarantine to include requirements

for cases or suspect cases of individuals with these diseases. The second proposed amendment is a new section under 105 CMR 300.193: Access to Medical Records and Other Information, authorizing school nurses to obtain immunization records or immunization related information, required for school admission, from health care providers with the specific authorization of a child's parents or legal guardian. This language will help ensure compliance with the school immunization requirements of Mass. General Laws, Chapter 76, §15. The final proposed amendment is the inclusion in the regulations of the surveillance of injuries dangerous to the public health. This section is added to authorize the Department to collect and/or prepare data on individuals evaluated or diagnosed with the injuries specifically listed. We request that the Public Health Council approve the amended language."

After consideration, upon motion made and duly seconded, it was voted (unanimously): to approve the Request for **Final Promulgation of Amendments to 105 CMR 300.000: Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements**; that a copy of the final amendments be forwarded to the Secretary of the Commonwealth; and that a copy be attached and made a part of this record as **Exhibit No. 14,832**.

DETERMINATION OF NEED PROGRAM:

REQUEST FOR APPROVAL OF INFORMATIONAL BULLETIN ON ANNUAL ADJUSTMENTS TO DETERMINATION OF NEED EXPENDITURE MINIMUMS:

Mr. Jere Page, Senior Analyst, Determination of Need Program, presented the Annual Bulletin to the Council. He said, "I am here to request your adoption of the Annual Informational Bulletin, which establishes the Determination of Need expenditure minimums for determining the thresholds by which an applicant might have to file a Determination of Need application. The minimums are increased each year with the use of two indices. The first is the Marshall & Swift Evaluation Service for the capital cost; and then, for the operating cost, we use the Global Insight Healthcare Cost Review. Exhibit A of the memo that you have shows the calculations used and Exhibit B shows the results, what shall be used for the filing year which began on October 1st of this year. We ask that you adopt this Informational Bulletin and the Expenditure Minimums for the following year and, or course, we would be happy to answer any questions."

After consideration, upon motion made and duly seconded, it was voted: (unanimously) to approve the **Request for Approval of the Informational Bulletin on Annual Adjustments to Determination of Need Expenditure Minimums** as noted below in Exhibits A and B. These figures are effective October 1, 2005.

Please note that these indices have been chosen by the Determination of Need Program as an authoritative resource due to their extensive use within the health care industry to determine inflation rates for a number of health care expenditures. While each of the indices has various regional and market sector subtleties and shadings, it is important for ease of administration to use a single inflation factor for capital costs and a single factor for operating costs. Thus, Marshall and Swift's statewide figures are used for the capital cost inflation and the average of Global Insight hospital and nursing home figures is used as the basis for recalculating inflated operating costs. The precise

mechanisms for these calculations are set forth in Exhibit A. The newly calculated expenditure minimums are set forth in Exhibit B.

EXHIBIT A

ANNUAL ADJUSTMENTS TO DETERMINATION OF NEED **EXPENDITURE MINIMUMS**

Determination of Need Regulations 105 CMR 100.020 require the Department of Public Health to adjust expenditure minimums (for inflation).

Capital Cost Indices (Marshall & Swift):

	October 2004	October 2005
Region – Eastern	2222.3	2338.1
Massachusetts	1.11	1.10

$$\frac{2338.1}{2222.3} \times \frac{1.10}{1.11} = 1.0426$$

Operating Costs (Global Insight):

	4 th Quarter 2004	4 th Quarter 2005
Skilled Nursing Facility	1.291	1.329
Hospital	1.296	1.36

$$\frac{(1.329)}{(1.291)} + \frac{(1.360)}{(1.296)} / 2 = 1.0394$$

EXHIBIT B

**ANNUAL ADJUSTMENTS TO DETERMINATION OF NEED
EXPENDITURE MINIMUMS**

Capital Expenditures

Project Type	October 1, 2004	Filing Year Beginning October 1, 2005
Equipment for non-acute care facilities and clinics	\$640,242	\$667,535
Total capital expenditure including equipment for non-acute care facilities and clinics	\$1,280,485	\$1,335,072
Capital expenditure, excluding major movable equipment, for acute care facilities and comprehensive cancer centers	\$12,004,549	\$12,516,300

Operating Costs

Project Type	October 1, 2004	Filing Year Beginning October 1, 2005
Nursing, Rest Homes and Clinics	\$623,693	\$648,272

ALTERNATIVE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATION:

Project Application No. 4-3B01 of Jewish Memorial Hospital – Request for transfer of ownership and original licensure of Jewish Memorial Hospital resulting from the acquisition of Jewish Memorial Hospital by Radius Management Services II, Inc.:

Mr. Jere Page, Senior Analyst, Determination of Need Program, presented Project Application No. 4-3B01 to the Council. He said in part, "...Radius Management Services II, Inc. is before the Council today seeking the Transfer of Ownership of Jewish Memorial Hospital and Rehabilitation Center in Boston. The transfer of the hospital results from a process commenced by the hospital in which bids were sought from health care providers to acquire substantially all the assets of the hospital. In response, formal bids were received from the following five bidders: Radius Management Services, the applicant; Select Medical Corporation; New England Rehabilitation Services of Central Massachusetts (i.e., UMass Medical Center Hospital and another entity); Specialty Hospitals of America; and Commonwealth Communities Incorporated. The Radius bid was accepted by the hospital and on June 27 of this year, the hospital and Radius executed an Asset Purchase Agreement and Management Agreement, and Radius actually began its management of the hospital this summer. Based on review of the Radius application, Staff has determined that the applicant satisfies the following five standards set forth under the DoN regulations for the transfer of

ownership. The first would be individuals residing in the Hospital's health systems area comprise a majority of the individuals responsible for decisions concerning: borrowings in excess of \$500,000; additions or conversions which constitute substantial change in service; approval of capital and operating budgets, and approval of the filing of an application for Determination of Need. The second is that the applicant and staff have consulted with the Division of Medical Assistance concerning the access of Medicaid patients at the hospital... The third is that the Department's Division of Health Care Quality found that the applicant and its affiliates have not engaged in any type of discrimination against Medicaid recipients and discharge planning. The fourth is that the Department has determined that the applicant is affiliated with the hospital, which is a non-acute hospital and is, therefore, not subject to a condition of approval to maintain or increase its level of free care, as defined in Mass. General Laws C118-G. That particular standard usually applies only to acute care hospitals, not non-acute hospitals. And the fifth is that the Jewish Memorial Hospital and Rehabilitation Center is licensed by the Department, and the applicant is affiliated with the hospital through a management agreement. Those are the five standards we use to determine whether somebody is approvable. In addition, a public hearing was held on this application on June 30th in Boston, at Carney Hospital, at the request of the Kimberly Smith and Enid Eckstein Interested Parties. Just to let you know, all comments at the hearing were in support of the hospital's acquisition by Radius Management Services. The Union, which represents a good number of the hospital's employees, expressed support for the proposed transfer, and recommended that the Department mandate that a specific number of beds remain at the hospital for a specified period of time, and to let you know that the applicant has agreed with the condition for approval to maintain sixty DPH licensed health care beds at Jewish Memorial Hospital for a period of three years, from the filing date of the DoN application, which was July of this year. In July of 2008 that period will expire."

Mr. Page noted that the Donoghue, Barrett & Singal Interested Parties submitted comments expressing concern about the clinical and financial capability of Radius to acquire the hospital. The interested party also said that the circumstances of the Radius application merits a full Determination of Need Review rather than this Alternate Process used here and they further said that Radius does not meet the requirements of the DoN regulations for the proposed transfer. In response, Staff notes that, based on review of the Radius application as submitted and clarification of issues by Radius, Staff found that Radius meets all those standards. Staff found that Radius meets all the standards and is approvable for the transfer of ownership. The Department's Division of Health Care Quality has found the applicant to be clinically suitable to acquire the hospital... We continue to recommend approval.

A brief discussion followed about the applicant's options in three years. Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control, noted that if the applicant decides to move the facility that would require a Transfer of Site application and Public Health Council approval. However, if the applicant chooses to close the facility, that would not be a Public Health Council action. Dr. Dreyer stated further, "Mr. Page is correct in that this is one of the few times that we have actually imposed a condition requiring an applicant to maintain a facility at its site post-transfer. Typically, applicants in this situation assert their intent to maintain a site, but are unwilling to make a formal commitment to maintain a site post-transfer. This is actually a commitment that has been greater than we usually see in these kinds of circumstances."

Discussion continued by the Council. The Council wanted to know the status of the 207 beds of Jewish Memorial Hospital at the moment. Christine Bassett, Director of Radius Management Services, William Duffy, Radius on-site representative (managing the hospital since June 27th) and David Roush, President, Radius Management Services, responded to questions by the Council. Mr. Roush said, “We do want to be very candid with you. There are really two parts of the business plan Radius has with JMH, and I don’t want to be bashful about telling you what it is. On the one hand, we are absolutely committed, as is reflected through the acceptance of the provisions, to make things work at the existing Roxbury campus. Our business judgment and market indicators show that it is most likely the number of beds for LTAC services at that location, that are viable to use, is somewhere in the sixty to eighty range. That’s why we agreed to a condition minimum of sixty. We will expand or contract above and beyond that number, depending on our experience and how it goes. But what we are very clear about is the fact that there will, at some point, be licensed beds for this very valuable and needed service, that can’t be prudently used at that site, and the plan is to come back to you, back to the licensing people and you on the Council, and case-by-case, propose to you your acceptance of a plan whereby a certain number of beds, it might be twenty or thirty beds, get located at other locations and those locations will be selected because of market research, experience in dealing with acute care providers, and also the fact that Radius does have, in the Commonwealth, a number of long term care facilities...You may see a combination of Medicare SNF (Skilled Nursing Facility) and LTAC (Long Term Acute Care) services that will offer to the marketplace a broad menu of service...”

Ms. Bassett added, “Historically, it has been many years since the full 207 beds have been occupied at even 80-85% occupancy. I think it is safe to say, for the last two to three years, that number has been under one hundred. Fifty-three patients are at the hospital today. We probably have admitted, on average, about 50 patients a month. As you know, the length of stay is very short for LTACs, so we discharge as many patients as we admit, and we are currently operating three units...”

It was noted that Radius owns, manages or leases fifteen skilled nursing facilities and one assisted living facility in Massachusetts at the current time. The company started in 1997. Ms. Bassett said in part, “We have standards of excellence within the company, and we are, I think, perceived as one of the major providers of skilled nursing facility care here in the Commonwealth...” Mr. Duffy noted that they serve all of the downtown hospitals, including Boston Medical Center, Carney, Brigham and Women’s, and Beth Israel. Mr. Roush stated, “Last year was the first year in the history of the state in which more than half the patients admitted to nursing homes were discharged to home, over 50%. Fifty-six thousand people in nursing homes had a short stay and went home.”

Mr. Bruce Fletcher, Union Representative of Service Employees International Union (SEIU) representing employees of Jewish Memorial Hospital, stated for the record that they support the transfer and are enthusiastic. “Radius seems to have financial stability and management skills which have not been there for a while”, he said.

After consideration, upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 4-3B01 of Jewish Memorial Hospital** for transfer of ownership and

original licensure of Jewish Memorial Hospital resulting from the acquisition of Jewish Memorial Hospital by **Radius Management Services II, Inc.**, based on staff findings. A staff summary is attached and made a part of this record as **Exhibit No.14,833**. This Determination is subject to the following conditions:

1. Radius shall maintain sixty (60) Department (“DPH”) licensed health care beds at Jewish Memorial Hospital for a period of three years from the filing date of the DoN application (July 2005).
2. With regards to its interpreter service, Radius shall:
 1. Develop a reliable and valid system for the collection of self-reported race and ethnicity information from patients.
 2. Develop a formal plan and provide the necessary systemic support to conduct outreach to non-English speaking communities throughout HSA IV.
 3. Translate patient education documents and signage into the most commonly spoken languages in the service area as needed.
 4. Submit the Annual Language Needs Assessment utilizing internal and external data. Involve community-based organizations in the Annual Needs Assessment required by 105 CMR 130.1103.

A plan to address these interpreter service elements shall be submitted to OMH within 120 days of the DoN approval, and Radius shall notify OMH of any substantial changes to its Interpreter Services Program. Also, Radius shall follow recommended National Standards for Culturally and Linguistically Appropriate Services (“CLAS”) in Health Care. In addition, Radius will provide annual progress reports to OMH on the anniversary date of the DoN approval.

The meeting adjourned at 10:35 a.m.

Paul J. Cote, Jr., Chair

LMH/lmh